) C. J. P. R. II-91

CF0000058554

(2)

APPEAL OF PRISONER

No. 363 Name के०दत्ता

Father's name पुकुराम निवासी ग्राम - नकनार, थाना - सीतापुर

Residence जिला - सरगुजा (म०प्र०) Age 22 वर्ष

Sentenced to आजीवन कारावास on 9-3-1994

Under Section 302 भा० दं०वि० by न्यायालय श्री न्यायाधीश - अतिरिक्त जिला सरगुजा (म०प्र०)

S.T.No. 234/93

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received 16-3-1994

3 Date on which Appeal sent _____

4 Whether the prisoner wishes to be represented or not. _____

No. 363 Name के०दत्ता उर्फ पुकुराम

Confined in केन्द्रीय Jail रायपुर (म०प्र०)

No. 252 Law. Dated 19/3/94 199

Forwarded to the अतिरिक्त सेशन्स न्यायाधीश भानपुरी उच्च न्यायालय मध्यप्रदेश जबलपुर (M.P.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

S.T.No. 234/93 श्री विनोद पति पक्ष: 1

Superintendent
Central Jail, Raipur. (M.P.)
Jail

High Court Jabalpur
Date of receipt in JABALPUR Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

Registration No. 296

Receipt Clerk
High Court Jabalpur.

No. _____ Dated _____ 199

Forwarded to the _____

Date of receipt in Appellate court _____

[P. I

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(10)

आदेश पत्रक

मामला क्रमांक CRA 973/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 973/1994

Appellant : Kendla

Vs.

Respondent : State of Madhya Pradesh

Shri V.D. Bajpai learned Sr. Counsel with Shri R.K. Tiwari for the appellant.

Shri U.N.S.Deo, learned Addl. Public Prosecutor and Shri M.P.S. Bhatia learned P.L. for the respondent/State.

ORAL JUDGMENT

(20.01.2006)

Per L.C. Bhadoo, J

The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality of the judgment of conviction and order of sentence dated 9.3.1994 passed by the Sessions Judge, Ambikapur in Sessions Trial No. 234/1993 whereby

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the learned Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.

2. Case of the prosecution in brief is that Ratanram PW-1 lodged the report Ex P-1 in Police Station Sitapur on 14.5.1993 to the effect that a day before thereto at about 7 p.m. when he returned after grazing buffalos he saw that his brother Karmu was lying dead in the verandah of the house. He saw that there was swelling in the neck of his brother. He called Butan and other villagers. Butan informed Ratanram that a day earlier at about 2.00 p.m. deceased Karmu and accused Kendla were quarreling. They indulged in beating and abusing each other and Kendla was saying that he would kill Karmu. After recording the FIR (P-1) the Investigating Officer left for the scene of occurrence and took into possession two leather whips from the place of occurrence. The site plan (Ex P-3) was prepared by Patwari and after giving notice to the Panchas Panchnama of the body (P-4) was prepared. Thereafter body of the deceased namely Karmu was sent for post mortem examination to Primary Health Centre Sitapur where Dr. C.R. Agrawal (P.W.8) conducted the post mortem and prepared post mortem report (Ex P-8). After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class Ambikapur who in turn committed the case to the Court of Sessions Judge, Ambikapur for trial.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

-3- (21)

आदेश पत्रक

मामला क्रमांक CRA 973/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
3.	Prosecution in order to establish the charge against the accused/appellant examined as many as 8 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him.	
4.	Learned Sessions Judge after hearing Additional Public Prosecutor and counsel for the appellant convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment.	
5.	We have heard Shri V.D. Bajpai learned Sr. counsel with Shri R.K.Tiwari for the appellant and Shri U.N.S. Deo and Shri M.P.S. Bhatia for the respondent/State and perused the evidence available on record including the judgment of the trial Court.	
6.	Homicidal nature of death is not in dispute.	
7.	PW-5 Butan was the witness to the incident and he has stated that he saw the accused and the deceased quarreling and on his persuasion the matter was compromised. Accused Kendla and deceased Karmu were beating each other with fists and kicks and thereafter he left the place of occurrence. In the evening he came to know that deceased Karmu was murdered. Thereafter, he along with Ratanram and Garju went to the house of the Sarpanch and Ratanram lodged the report in the police station.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक CrA 973/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
8.	PW-4 Gopal has stated that accused Kendla made an extra judicial confession before him and stated that he had murdered Karmu, therefore, in view of evidence of PW-5 Butan who witnessed the quarrel between the deceased and accused and also in view of the extra judicial confession made by the accused before PW-4 Gopal it is established that accused Kendla was the author of the crime in question.	
9.	Learned counsel for the accused/appellant argued that the only allegation against the accused/appellant is that accused/appellant and the deceased were quarreling and they were beating each other with fists and kicks and in that process deceased Karmu received injuries and therefore the intention of the accused/appellant to commit murder of the deceased cannot be attributed to accused/appellant, therefore, the offence against the appellant does not travel beyond section 304 part II of the IPC.	
10.	On the other hand learned Additional Public Prosecutor appearing for the State supported the judgment of the trial Court.	
11.	PW-5 Butan who witnessed the incident in question has categorically stated in his evidence that deceased and the accused were quarreling and beating each other with fists and kicks and as per the post mortem report deceased died on account of internal hemorrhage in the abdomen, therefore, it cannot be inferred from the circumstances that the accused namely Kendla assaulted deceased Karmu with an intention to cause death. However, from the facts and circumstances of the case and the	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 973/94 सन् 200

विरुद्ध

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evidence on record it can be inferred that when the accused was assaulting the deceased with fists and kicks, he must have the knowledge that by kicks and fists Karmu might receive the fatal injuries as the spleen and liver of the deceased were ruptured. Therefore, we are of the considered opinion that conviction of the accused/appellant under section 302 of the IPC cannot be sustained and on the basis of evidence available on record offence under section 304-II of the IPC is made out against the accused/appellant.

12. In the result, the appeal partly succeeds. Conviction and sentence awarded under section 302 of the IPC are set aside, instead thereof, accused/appellant is convicted under section 304-II of the IPC and sentenced to undergo RI for seven years. Accused/appellant is in custody since 17.5.1993 and thereby he has already served the sentence awarded to him therefore, he be set at liberty if not required in any other case.

13. A copy of the judgment be provided to Shri R.K.Tiwari, Advocate free of cost.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.06 11:17:35 +0530